

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 HENRY JOHNSON,

4 Plaintiff

5 v.

6 BRAD BEAL, et al.,

7 Defendants

Case No.: 3:22-cv-00132-RCJ-CSD

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1, 4

8 This Report and Recommendation is made to the Honorable Robert C. Jones, United  
9 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28  
10 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

11 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro  
12 se complaint (ECF No. 1-1). He has also filed a motion for appointment of counsel. (ECF No. 4.)

13 Plaintiff's complaint names One Nevada Credit Union and its President/CEO Brad Beal,  
14 as well as its Administrative Service Specialist John Scharfenberg.

15 Plaintiff alleges that Brad Beal failed to safeguard and secure Plaintiff's checking account  
16 by allowing illegal activity to occur because someone was allowed to access Plaintiff's account  
17 without his authorization. He avers that John Scharfenberg was aware of ongoing fraud to  
18 Plaintiff's account and failed to stop or recover funds that were transferred into another One  
19 Nevada Credit Union account. Plaintiff alleges that funds from his account were transferred to  
20 another One Nevada Credit Union account during the months of April 2013 through June of  
21 2016. He asserts claims for fraud and exploitation of an older/vulnerable person.

22 Plaintiff states that the basis for jurisdiction is diversity of citizenship, but then alleges  
23 that he is a citizen of the State of Nevada, and each of the Defendants resides in Nevada. (ECF

1 No. 1-1 at 2-3.) The law grants federal courts jurisdiction in cases between “citizens of different  
2 states.” 28 U.S.C. § 1332(a)(1). This requires complete diversity of citizenship. *Caterpillar Inc.*  
3 *v. Lewis*, 519 U.S. 61, 68 (1996); *see also Weeping Hollow Avenue Trust v. Spencer* (9th Cir.  
4 Aug. 2, 2016). Diversity jurisdiction does not exist here.

5 Plaintiff does not include any cognizable federal claims that would otherwise confer  
6 jurisdiction in the federal court. As such, Plaintiff’s complaint should be dismissed without  
7 prejudice so that he may bring his action in State court, and the federal court action should be  
8 administratively closed. Plaintiff’s IFP application and motion for appointment of counsel should  
9 be denied as moot.

#### 10 **RECOMMENDATION**

11 IT IS HEREBY RECOMMENDED that the District Judge enter an order:

12 (1) **DISMISSING** this action **WITHOUT PREJUDICE**, so that Plaintiff may bring his  
13 action in State court, and **ADMINISTRATIVELY CLOSING** this federal case;

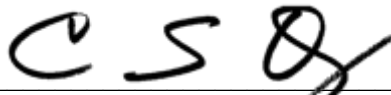
14 (2) **DENYING AS MOOT** Plaintiff’s IFP application (ECF No. 1) and motion for  
15 appointment of counsel (ECF No. 4).

16 Plaintiff should be aware of the following:

17 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
18 this Report and Recommendation within fourteen days of being served with a copy of the Report  
19 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s  
20 Report and Recommendation” and should be accompanied by points and authorities for  
21 consideration by the district judge.

1           2. That this Report and Recommendation is not an appealable order and that any notice of  
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
3 until entry of judgment by the district court.

4  
5 Dated: June 6, 2022

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7 Craig S. Denney  
United States Magistrate Judge  
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